

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEBRA J. ESHLEMAN,  
Plaintiff,

v.

LARRY G. MASSANARI,  
Acting Commissioner of the  
Social Security Administration,  
Defendant.

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CIVIL ACTION

NO. 00-CV-4543

**Memorandum and Order**

YOHN, J.

August \_\_, 2001

Pursuant to 42 U.S.C. § 405(g), plaintiff Debra Eshleman seeks judicial review of the Commissioner of Social Security's final decision to deny Eshleman's claim for disability insurance benefits ("DIB") under Title II of the Social Security Act ("Act"). The parties filed cross-motions for summary judgment, which were referred to Magistrate Judge Linda Caracappa, who recommended Eshleman's motion for summary judgment be denied and the Commissioner's motion be granted. Eshleman has filed her objections to the report and recommendation. Because the Commissioner's decision is supported by substantial evidence in the administrative record, I will approve and adopt Magistrate Judge Caracappa's report and recommendation.

**I. Background**

The factual background and procedural history of this case are fully set forth in Magistrate Judge Caracappa's report and recommendation. *See Rep't & Rec. (Doc. # 12) at 1-9.*

## II. Standard of Review

The district court must “make a de novo determination of those portions of the [magistrate judge’s] recommendations to which” the plaintiff objects. 28 U.S.C. § 6363(b)(1)(C). The court may “accept, reject, or modify, in whole or in part, the [magistrate judge’s] findings or recommendations.” *Id.*; see *Haines v. Liggett Groups, Inc.*, 975 F.3d 81, 91 (3d Cir. 1992).

The court may not, however, undertake a de novo review of the Commissioner’s decision. See *Hunter Douglas, Inc. v. NLRB*, 804 F.3d 808, 812 (3d Cir. 1986). The court determines if “substantial evidence in the record” supports the denial of DIB benefits. *Adorno v. Shalala* 40 F.3d 43, 46 (3d Cir. 1994). “Substantial evidence” is evidence that “a reasonable mind might accept as adequate to support a conclusion” after reviewing the entire record. *Id.* (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

## III. Discussion

The Social Security Act (“SSA”) provides that one is disabled if he or she is not able “to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A); see also *Adorno*, 40 F.3d at 46. To determine if one is disabled, the SSA applies the following five-step analysis:

In step one, the Commissioner must determine whether the claimant is currently engaging in substantial gainful activity. If a claimant is found to be engaged in substantial activity, the disability claim will be denied.

In step two, the Commissioner must determine whether the claimant is suffering

from a severe impairment. If the claimant fails to show that her impairments are "severe," she is ineligible for disability benefits.

In step three, the Commissioner compares the medical evidence of the claimant's impairment to a list of impairments presumed severe enough to preclude any gainful work. If a claimant does not suffer from a listed impairment or its equivalent, the analysis proceeds to steps four and five.

Step four requires the ALJ to consider whether the claimant retains the residual functional capacity to perform her past relevant work. The claimant bears the burden of demonstrating an inability to return to her past relevant work.

If the claimant is unable to resume her former occupation, the evaluation moves to the final step. At this stage, the burden of production shifts to the Commissioner, who must demonstrate the claimant is capable of performing other available work in order to deny a claim of disability. The ALJ must show there are other jobs existing in significant numbers in the national economy which the claimant can perform, consistent with her medical impairments, age, education, past work experience, and residual functional capacity. The ALJ must analyze the cumulative effect of all the claimant's impairments in determining whether she is capable of performing work and is not disabled. The ALJ will often seek the assistance of a vocational expert at this fifth step.

*Plummer v. Apfel*, 186 F.3d 422, 428 (3d Cir. 1999) (paragraph divisions added and citations omitted); *see also* 20 C.F.R. §§ 404.1520(a)-(f), 404.1523 (West 2001). "A claimant is considered unable to engage in any substantial gainful activity 'only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy....'" *Fagnoli v. Massanari*, 247 F.3d 34, 39 (3d Cir. 2001) (quoting 42 U.S.C. § 423(d)(2)(A)).

The SSA administrative law judge ("ALJ") found that Eshleman was not gainfully employed, and could not return to her past employment. Tr. 20 , Findings # 2, 6. The ALJ further found that the medical evidence established that Eshleman had obesity, asthma, and

diabetes but that none of these impairments met or equaled the severity of the impairments listed in the SSA's Appendix 1 guidelines. *Id.*, Finding # 3. The ALJ also found that Eshleman had a residual functional capacity to perform sedentary work involving repetitive one-step or two-step processes as long as the work does not require significant interaction with the public, as long as the work environment is climate controlled, and as long as the work does not require exposure to excessive fumes or odors. *Id.*, Finding # 5. The ALJ found that with this residual capacity Eshleman could make an adjustment to perform jobs that exist in significant numbers in the national economy. *Id.*, Findings # 11, 12. Accordingly, the ALJ denied Eshleman's DIB claim. *Id.* at 21.

Before Magistrate Judge Caracappa, Eshleman made two objections to the ALJ's ruling. First, Eshleman asserted that the ALJ committed an error of law because he failed to assess the severity of Eshleman's conditions in combination. Pl.'s Mot. for Summ. J. (Doc. # 7). Second, Eshleman asserted that the ALJ's decision is not supported by substantial evidence because the ALJ did not accord proper weight to Eshleman's subjective complaints. *Id.* Magistrate Judge Caracappa in her very thorough Report and Recommendation found that the ALJ's determination met the substantial evidence threshold. Report and Recommendation (Doc. # 12). In her objections to the Report and Recommendation, Eshleman reasserts the very same objections presented to the Magistrate Judge Caracappa. *See* Pl.'s Objections (Doc. # 13). In considering these objections, I have independently reviewed the entire administrative record, the report and recommendation, and the parties' submissions. I will address Eshleman's objections seriatim.

#### **A. Objection 1**

Eshleman "specifically objects to Magistrate Caracappa's opinion that the Commissioner

properly analyzed the cumulative effect of all of the Plaintiff's impairments, both severe and non-severe, on her ability to perform substantial gainful employment." Pl.'s Objections 1. The ALJ's decision, however, shows that the ALJ did consider the cumulative effect of the severe and non-severe impairments Eshleman presented. Furthermore, substantial evidence supports the ALJ's finding that Eshleman's residual capacity enables her to perform work in the national economy and that therefore Eshleman is not entitled to DIB.

The ALJ applied the SSA's five-step analysis. First he found that Eshleman was not engaged in a substantial gainful activity. Tr. 12. The ALJ did find that Eshleman had a variety of serious impairments: obesity, asthma, and diabetes. *Id.* 12, 15-16. Next, he analyzed "whether the claimant has a 'severe' impairment or *combination* of impairments." *Id.* 12 (emphasis added). The ALJ noted that "[a]lso to be considered at this point are non-severe impairments or impairments that do not impose significant vocationally relevant restrictions." *Id.* The ALJ found that a number of Eshleman's impairments were not severe because they did not "impose significant vocationally relevant restrictions" on Eshleman: namely, Eshleman's depression, migraine headaches, peripheral edema, chronic venous stasis dermatitis, chronic obstructive pulmonary disease, cor pulmonale, and sleep apnea. *Id.* These impairments were either properly controlled, not properly evidenced by Eshleman, or not so severe as to prevent her from all types of work. *Id.* 13-14.

The ALJ proceeded to address the combined effects of Eshleman's severe and non-severe impairments. The decision notes that "the claimant has suffered from various health problems for a number of years and alleged that the combined effects from all of her impairments made her unable to work as of May 31, 1997, her alleged onset of disability." *Id.* 14. In assessing

this claim, the ALJ noted that one of the medications Eshleman has taken to control her asthma increases her blood sugar levels and thereby aggravates her diabetes. *Id.* 15.

Furthermore, in assessing Eshleman's residual functional capacity, the ALJ took into account the combined effects of Eshleman's impairments stating that "consideration must be given to the entire record." *Id.* 14. The ALJ notes that Eshleman's asthma and obesity limit her ability to perform lifting and carrying functions. *Id.* 15-16. In light of Eshleman's impairments as a whole, the ALJ found that Eshleman retained no more than the ability to perform sedentary work as defined in 20 C.F.R. §§ 404.1567. Moreover, the ALJ added that Eshleman should not have significant interaction with the public, should work in a climate controlled environment, and should not have exposure to excessive fumes or odors and should only perform repetitive one- to two-step work processes. Tr. 18. As read in the context of the ALJ's decision, it is clear that these limitations reflect the ALJ's consideration of the combined effects of Eshleman's impairments. The sedentary work limitation addresses the effects of Eshleman's obesity and asthma. Avoidance of contact with the public reflects consideration of Eshleman's compromised immune system resulting from pulmonary problems related to her asthma. The climate control and fume and odor limitations also address Eshleman's asthma. Moreover, the ALJ concluded that Eshleman's other impairments were adequately controlled by treatment or were not adequately evidenced by Eshleman and therefore did not affect her residual functional capacity. *Id.* 12-13.

Although the ALJ's reasoning would have been more transparent had he explicitly articulated the combined effects of Eshleman's impairments, it is readily apparent that the ALJ did render his decision after taking into account the combined effects of Eshleman's

impairments. As such, substantial evidence supports the ALJ finding that Eshleman is not entitled to DIB by virtue of her residual functional capacity and the ALJ did not commit an error of law.

## **B. Objection 2**

Eshleman “specifically objects to Magistrate Caracappa’s opinion that the Commissioner properly considered the Plaintiff’s subjective complaints.” Pl.’s Objections 1. Eshleman contends that the ALJ dismissed Eshleman’s subjective allegations because they were not supported by medical evidence. *Id.* At 5. Eshleman also appears to argue more generally that her subjective complaints were not lent proper weight in the ALJ’s overall analysis. The ALJ’s decision shows that he considered Eshleman’s subjective complaints, and a review of the ALJ’s reasoning shows he did not reject the complaints solely for lack of supporting medical evidence but rather balanced Eshleman’s complaints against contrary evidence.

The ALJ found that Eshleman’s “statements, although generally credible, indicate limitations greater than one would anticipate given the remainder of the record.” Tr. 17. The ALJ found that Eshleman has “some ability to conduct activities,” that her conditions “are adequately controlled through medication or other measures,” and that “although she has had regular medical care, she has not had the degree of care one would anticipate with a finding of disability.” *Id.* The decision indicates that the ALJ considered Eshleman’s subjective complaints in light of facts about her residual functional capacities, facts about the state of her illnesses, and the degree of care necessary to control her illnesses. Plainly, the ALJ did not reject Eshleman’s subjective complaints offhand or due to a lack of supporting medical evidence. Rather, the ALJ discarded those aspects of Eshleman’s complaints that were firmly contradicted by specific

evidence. Furthermore, to the extent Eshleman presented medical evidence supporting her subjective complaints, namely the medical opinion of Dr. Shultz, the ALJ considered the opinion and explained why he lent it limited weight. *Id.* 16. In sum, the record before the court establishes that there is substantial evidence to support the ALJ's finding that Eshleman is not impaired in a manner that would entitle her to DIB and that he did not commit an error of law by disregarding plaintiff's subjective complaints solely because they were not substantiated by objective medical evidence.

#### **IV. Conclusion**

Neither of the plaintiff's objections shows errors of fact or errors of law in Magistrate Judge Caracappa's Report and Recommendation to deny plaintiff's motion for summary judgment and enter summary judgment in the defendant's favor. Moreover, there is substantial evidence in the record to support the Social Security Administration's decision to deny the plaintiff DIB. Accordingly, I will approve and adopt the Report and Recommendation.



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CIVIL ACTION

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**Order**

And now, this                      day of August, 2001, upon consideration of the parties' cross-motions for summary judgment (Docs. # 7, 8), and after review of the administrative record, the magistrate judge's report and recommendation (Doc. # 12), and the plaintiff's objections thereto (Doc. # 13), it is hereby ORDERED AND DECREED that:

1. The report and recommendation is APPROVED AND ADOPTED;
2. The plaintiff's motion for summary judgment is DENIED;
3. The defendant's motion for summary judgment is GRANTED; and
4. Judgement is entered affirming the decision of the Commissioner of Social Security.

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William H. Yohn, Jr., Judge